

12-08-05

Docket No. MSN-32778

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellants : Stefan Miersch et al.
Serial No. : 10/008,603
Filing Date : November 9, 2001
For : Method and Apparatus for Producing Methane Gas
Group Art Unit : 1764
Examiner : Thanh P. Duong
Confirmation No. : 9226

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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37 CFR 1.8(a)

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Dear Sirs:

TRANSMITTAL OF REPLY BRIEF

1. Transmitted herewith, is the REPLY BRIEF in this application, with respect to the Examiner's Answer mailed on October 7, 2005.

2. STATUS OF APPLICANT

This applicant is a small entity.

3. EXTENSION OF TERM

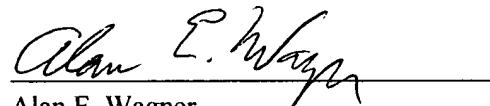
The proceedings herein are for a patent application and the provisions of 37 C.F.R. section 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

4. FEE DEFICIENCY

If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 232053. If any additional fee for claims is required, charge Account No. 232053.

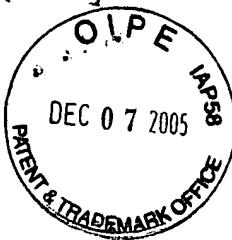
Date: December 7, 2005



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Dear Sirs:

REPLY BRIEF UNDER 37 C.F.R. §41.41

This brief replies to the Examiner's Answer mailed October 7, 2005. The Appellants believe that the Examiner's Answer indicates that the Examiner still does not appreciate that the proposed modifications of the apparatus of Garvin et al. would render the device of Garvin et al. inoperable for its purpose. As stated in the abstract, Garvin et al. disclosed an apparatus having "an opening . . . at the rear end to provide an exhaust opening for air that is forced into the conduit . . . through the bag material . . . to lower the moisture content to provide oxygen as may be desired to enhance the composition."

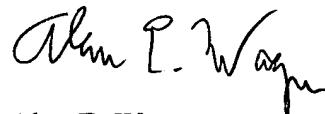
As stated in appealed Claim 7, the inventive system comprises a flexible bag having a tubular length partially filled with a biomass material and “a remaining tubular length of the bag . . . being unfilled with the material . . . and to be filled with said gas emitted by the biomass. . . .” Because the methane gas generated in the inventive system would take the path of least resistance, such gas would exit the bag via the rear vent rather than filling the unfilled tubular length of the bag (which clearly would require exerting force against the walls of the bag). Therefore, in order for the Garvin et al. system to function for purposes of the current invention as proposed by the Examiner, the vent of the Garvin et al. bag would have to be sealed. However, a ventless bag would preclude forcing air through the biomass material inside the bag as required for operation of the invention of Garvin et al.

Likewise, the apparatus of Garvin et al. uses the air forced through the biomass to provide an aerobic composition for decomposition purposes. In contrast, the production of methane gas requires an anaerobic environment. Therefore, the Examiner’s proposed modifications would require that the apparatus of Garvin et al. be modified to produce an anaerobic environment rather than the aerobic environment required for the purposes of Garvin et al.

In the current invention, the gas emitted by the biomass material fills the unfilled tubular length of the bag. In contrast, any gases emitted by the biomass in the Garvin et al. system will be entrained in the air forced through the biomass and exit the bag through the rear vent. Therefore, to accomplish the modifications proposed by the Examiner, Garvin et al. would have to be modified to not force air through the biomass, but such a modification would render the invention of Garvin et al. useless for drying materials or providing anaerobic decomposition.

For all three of the above reasons, plus the reasoning presented in more detail in the Appeal Brief, the Examiner's objections must be reversed as impermissibly rendering the primary reference unsuitable for its intended purpose.

Respectfully submitted,



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Date: December 7, 2005

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